IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 3576 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RABIYABANU RAFIQBHAI KURESHI - Appellant(s)
Versus
LALITBHAI LAXMISHANKAR DAVE & 5 - Defendant(s)

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Appearance :
MR BHARAT B SHAH for Appellant(s) : 1,
NOTICE SERVED BY DS for Defendant(s) : 1 - 2,4 - 5.
MR PV NANAVATI for Defendant(s) : 2,
MR VIBHUTI NANAVATI for Defendant(s) : 2,
DELETED for Defendant(s) : 3, 6,
MR MAULIK J SHELAT for Defendant(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/11/2006
ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgement and award dated 28.2.2005 passed by the Motor Accident Claims Tribunal (Auxiliary-3), Ahmedabad (Rural) at Navrangpura in M.A.C. Petition No.1548 of 1993 for enhancement of the compensation.

2. The appellant-claimant [Rabiyabibi Raifqbhai Kureshi] had filed the claim petition for compensation of Rs. 12 lakhs for the injuries caused to her in a motor vehicle accident. It was contended in the claim petition that the claimant had gone to Ajmer, Khawaja Garib Navaz, for religious purpose in Mini Luxury Bus bearing registration No. GJ I-V 1236. In the said vehicle, they were returning on 26.8.1993 and when they were passing over Ahmedabad-Himatnagar National Highway Road No. 8 at that time between Chandra-Mahadevpura Patiya at about 00.30 hours on 27.8.1993 i.e. on 26.8.1993 midnight, one truck bearing registration No. RRY 7056 came from the opposite direction and dashed with the Mini Luxury Bus in which the claimant was travelling as a passenger.

3. In the aforesaid background, claimant-Rabiyabibi Rafiqbhai Kureshi filed Claim Petition No.1548 of 1993 in which it was stated that in the said unfortunate accident the claimant suffered

serious injuries. After the occurrence of accident, the claimant had been admitted to Himmatnagar civil Hospital and thereafter shifted into V.S. Hospital, Ahmedabad. On the date of the accident she was aged 25 years old.

4. It may be noted that on the date of accident the claimant was earning Rs. 4,500/- per month by sewing cloths. She had a right leg tibia fibula fracture, knee fracture, a large scar over parietal region and compression fracture of the D-12 spine, dorsum-lumber spine and other injuries and in the hospital the operation was performed and she remained in the hospital as indoor patient for long and thereafter she had taken treatment from a private Doctor. It was further alleged that the claimant had permanent disability and she suffered lot of pain, shock and agony during the treatment and the claimant had to incur expenditure in connection with medicine, doctor's fees, transportation, special diet and, therefore, on all these grounds the claimant claimed compensation of Rs. 12 lakhs from the opponents together with interest and costs.

5. Opponent No. 1 Lalitbhai Laxmishankar Dave, opponent No. 4 Rajendra K Maru were duly served with the notices but from the record it appears that they did not appear either personally or through their advocate to contest the petitions. To that extent the matter proceeded ex-parte against the said opponents. While opponent No. 2 New India Insurance

Co. Ltd., and opponent No. 5 United India Insurance Co. Ltd., insurers of both the vehicles were also served with the notice and both the Companies appeared through their ld. Advocates and filed their written statements challenging the claim in each petition. In the written statements after formal denials, it was mainly contended by both the Companies that there was contributory negligence and that the claim of compensation was exaggerated and prayed for dismissal of the petition.

6. The Tribunal framed two issues, namely, (i) whether the petitioner sustained the injury because of the rash and negligent driving of the vehicle involved in the accident, (ii) whether the petitioner proved that she is entitled to receive compensation as claimed for or any part thereof from the opponents or any of them.

7. As regards negligence, the Tribunal has relied on copy of the FIR and panchnama report and deposition of the claimants and considering the facts of the panchnama and the arguments of the learned advocates for the parties, the Tribunal has held that both the drivers of the vehicles were equally negligent in driving and because of their rash and negligent driving, the accident occurred. The learned Judge thus decided issue No. 1 in favour of the claimants.

8. As regards the second issue, namely, whether

the petitioner proved that she is entitled to receive compensation as claimed for or any part thereof from the opponents or any of them - so far as the head of loss of future income is concerned, it is stated that the claimant's working capacity is bound to reduce due to accidental injury. The claimant has given her deposition vide Exh. 88 in which the claimant has stated that she has suffered injury over head and spinal fracture in D-12 and tibia fibula fracture. There was lot of bleeding and therefore she had remained unconscious for a long period and she had been admitted to V.S. Hospital as indoor patient for a period of 15 days. It is further stated that due to the said injury she had to take treatment from private hospital. She remained bedridden for six months. At present she is not able to properly walk, she is not able to lift weight. She is facing difficulties in walking, sitting etc. It is stated that on the date of the accident she was aged 25 years and earning Rs. 4,500/- by sewing the cloths. During the course of her cross-examination it was admitted that the claimant had not produced any document to prove her income. The claimant produced disability certificate of Dr. A.G. Memon vide Exh. 122 who assessed disability of the claimant at 18% of the body as a whole and Dr. Balkishan Desai's disability certificate shows mental disability to the tune of 28% vide Exh. 140. The claimant also examined both the Doctors in support of documentary evidence.

9. In view of the aforesaid injuries, the

Tribunal has taken notional income of Rs. 1,500/-, the disability of 25% and multiplier of 16 and worked out future loss of income at Rs.72,000/- (25% of Rs. 1500 = Rs.375 x 12 months x 16 multiplier). The Tribunal has thus awarded Rs.72,000/- under the head of compensation for future loss of income.

The Tribunal has also awarded Rs. 10,000/- under the head of pain, shock and suffering.

Considering the notional income of Rs. 1,500/- per month, the learned Judge awarded Rs. 6,000/- for a period of four months towards actual loss of income. The learned Judge further awarded Rs. 4,000/- under the head - transportation charges and special diet charges and caretaker charges on lumpsum basis. Regarding medical expenses, the Tribunal after considering documentary evidence, awarded Rs. 3,000/- under the head - medicines and other charges. Thus the learned Judge awarded in all a sum of Rs.95,000/- with proportionate costs and interest at the rate of 12% per annum from the date of the claim petition till 31.12.1999 and thereafter at the rate of 9% per annum.

10. We have heard Mr BB Shah, learned advocate for the appellant, Mr Nanavati for respondent No.2 and Mr Maulik Shelat for respondent No.5. We have also gone through the evidence on record. We have also gone through the award passed by the Tribunal.

11. The Tribunal has taken notional income of the injured claimant at Rs. 1,500/- per month. The prospective income is not taken into consideration. We, therefore, take prospective income at Rs.2,250/- per month. Thereafter, we take 32% of disability i.e. 32% of Rs.2,250/- which comes to Rs.720/-. Thus the loss of future income is worked out at Rs.1,38,240/- [Rs.720 x 12 months x 16 multiplier] as against Rs.72,000/- awarded by the Tribunal. Thus additional amount of Rs.66,240/- is awarded to the appellant under the head of compensation for loss of future income.

12. As regards compensation for pain, shock and suffering, the Tribunal has awarded Rs.10,000/-. However, considering the fact that the accident in question took place as far back as on 27.8.1993 and even ten years thereafter i.e. on the date of examination by Dr BN Desai on 20.9.2003, the said Neuro Surgeon found that even though there was no gross neurological deficit, her headache was continuous, dull, aching type with episodic exacerbations, when it becomes severed throbing type, 2- 3 such episodes every month, each lasting few hours, invariably associated with positional vertigo and that she has severe back ache with radiating pain in the left lower limb and that her flexion and extension in the dorso-lumber spines are very painful and restricted and she is unable to squat for more than a few minutes on account of two-third compression of the body of the D-12 spine. We are of

the view that the applicant needs to be awarded Rs.20,000/- for pain, shock and suffering and for loss of amenities of life.

13. The Tribunal has taken actual loss of income at Rs. 1,500/- per month and awarded Rs.6,000/- for 4 months. We maintain this award of compensation for loss of past income.

14. As regards attendant charges/medical treatment, the Tribunal has awarded Rs.4,000/-. We maintain the award under this head.

15. In view of the above discussion, additional amounts being awarded to the appellant by this Court are given in the following tabular form:

	Amounts awarded by the Tribunal **Rs.**	Amounts being awarded by this Court **Rs.**	Additional amount awarded by this Court **Rs.**
(i)Future loss of income	72,000/-	1,38,240/-	66,240/-
(ii) Actual loss of income for 12 months	6,000/-	6,000/-	-
(iii) Pain, shock, suffering	10,000/-	20,000/-	10,000/-
(iv)Transportation/special diet/attendant charges	4,000/-	4,000/-	-
(v) Medicine exps.	3,000/-	3,000/-	-

Total	95,000/-	1,71,240/-	76,240/-

16. We accordingly modify the award of the Tribunal and raise the amount of compensation from Rs.95,000/- to Rs.1,61,240/-. Thus, we award additional amount of Rs.76,240/- to the claimants with proportionate costs. The additional amount shall carry interest at the rate of 9% from the date of filing the claim petition till the date of deposit, which shall be made within one month from today.

17. Appropriate orders for investment/ disbursement shall be passed by the Tribunal.

In the result, the appeal is partly allowed in the above terms. The award passed by the Tribunal is modified to the aforesaid extent.

(M.S. SHAH, J)

(AKIL KURESHI, J)

sundar/-